



Office of the Attorney General

State of Texas

January 27, 1997

DAN MORALES
ATTORNEY GENERAL

Ms. Elizabeth Lutton
Assistant City Attorney
P.O. Box 231
Arlington, Texas 76004-0231

OR97-0168

Dear Ms. Lutton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 103199.

The City of Arlington (the "city") received a request for the "Hay Pay scale from the years 1-89 through present." You state that the requested information is excepted from required public disclosure by section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the sample which you have submitted.¹

Section 552.103(a) excepts from disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

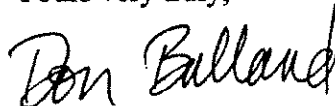
is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The city must meet both prongs of this test for information to be excepted under 552.103(a).

In this instance, you explain that the city is currently involved in pending litigation, *Gonzalez, et al. v. Arlington*, No. 4-96 CV-072 E (N. D. Tex. Filed Jan. 26, 1996). You have provided this office with a copy of the complaint in that case. After reviewing the submitted materials, we conclude that litigation is pending and that the requested documents relate to the litigation. The city may, therefore, withhold the requested information.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 103199

Enclosures: Submitted documents

cc: Mr. Ray Rodriguez
1607 Rockdale Drive
Arlington, Texas 76018
(w/o enclosures)